UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

CERTIFIED TRANSCRIPT

WADE P. GORDON,)
Plaintiff, }
vs. }
} SACV-15-1131-JVS
QUICKEN LOANS, INC., et al.)
Defendants. }
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

December 14, 2015

SHARON A. SEFFENS, RPR
United States Courthouse
411 West 4th Street, Suite 1-1053
Santa Ana, CA 92701
(714) 543-0870

APPEARANCES OF COUNSEL:

For the Plaintiff:

WADE P. GORDON, PRO SE
14125 Nancy Lee Drive
Westminster, CA 92683

For the Defendants:

HASSAN ELRAKABAWY
MCGLINCHEY STAFFORD
18201 Von Karman Avenue, Suite 350
Irvine, CA 92612
(949) 381-5900

SANTA ANA, CALIFORNIA; MONDAY, DECEMBER 14, 2015; 1:43 P.M.

01:43 THE CLERK: Item No. 11, SACV-15-1131, Wade P. Gordon versus Quicken Loans, Inc., et al.

01:43 Counsel and parties, please step forward and state your appearances.

01:43 MR. GORDON: Wade Gordon, plaintiff.

01:43 MR. ELRAKABAWY: Good afternoon, Your Honor. Hassan Elrakabawy for the defendant Quicken Loans.

01:43 THE COURT: Good afternoon.

01:43 Have you all reviewed the tentative rulings?

01:43 MR. GORDON: Yes.

01:43 MR. ELRAKABAWY: Yes.

01:43 THE COURT: Let's take up the Motion to Remand.

01:44 Do you want to be heard on that one, Mr. Gordon?

01:44 MR. GORDON: Is the judgment final, or is this something I can appeal? I mean, it's pretty straightforward in the documentation. What is Your Honor asking of me?

01:44 THE COURT: Well, I issue tentatives on Fridays. Those aren't the final orders. The purpose of issuing those is to give and counsel and the parties an opportunity to know where the Court's thinking is, so you can come in and if you want to to argue, you can address the concrete position that the Court has laid out.

01:44 Do you want to be heard on the Motion to Remand?

01:44 MR. GORDON: Yes, I do. I believe Your Honor is

01:44 setting a dangerous precedent by allowing companies that are
01:45 outside the jurisdiction but operating here in California as
01:45 entities to not be tried as a California --

01:45 THE COURT: Sir, let's go back to the
01:45 Constitution, seriously, the Constitution and the
01:45 constitutional debates. We have something called diversity
01:45 jurisdiction; that is, a citizen of one state can take a
01:45 case to federal court if he is bringing it against a citizen
01:45 of another state.

01:45 The thinking was -- I don't know if this is
01:45 precisely the exact example that they use, but I'm selling
01:45 goods from Ohio, and I sell them to somebody in
01:45 Massachusetts. The deal goes sour, and I don't get paid. I
01:45 go to Massachusetts and sue. That case can be brought in
01:45 federal court.

01:45 In federal court, the judges aren't elected. They
01:46 are appointed by the president. In most states, judges are
01:46 either elected in the first instance or -- the case in
01:46 California is most of the time you get appointed, but you
01:46 have to run for election.

01:46 So the theory behind that provision is if you
01:46 don't have somebody who is beholding to the local people and
01:46 might favor the hometown party, we're better off. That's
01:46 what diversity jurisdiction is about. So the fact that they
01:46 are from another state really is not beside the point. It

is the point.

MR. GORDON: But they do have offices in California. They are operating in California. They are operating according to California real estate laws.

THE COURT: But 1332 looks to two things to determine where a state is appropriate for diversity purposes: One, what's the state of incorporation? For Quicken, it's not California. Where is their headquarters? The Supreme Court defines that as the nerve center. Where is the president, the CEO? Where do they make all the big decisions? That's not California. So under the statute, they are not a California corporation for purposes of diversity.

The tentative is going to be the order of the Court with regard to the remand motion.

Let's turn to the Motion to Dismiss. Do you want to address that?

MR. GORDON: The defendant said they had no relief. They had 120 days of relief. According to the U.S. Treasury, if they receive something that is not acceptable, they are to return it with dishonor. There was no return with dishonor even after three notices. I followed every rule according to the U.S. Treasury to --

THE COURT: But you have to tender a valid instrument in the first place.

01:48 MR. GORDON: It was a surety bond. There is a discharge bond that it's tied to and deposited in the U.S. Treasury. They didn't even do their due diligence in regards to this.

01:48 THE COURT: Mr. Elrakabawy, does your client still have the bond?

01:48 MR. ELRAKABAWY: I'm not sure if we still have the bond. The reason I'm hesitating to speak is I know and understand that there was an investigation regarding what was submitted, so I don't know if that's been turned over as part of that in response to discovery.

01:48 THE COURT: An investigation by whom?

01:49 MR. ELRAKABAWY: By people in the federal government. As I understand it, there was an investigation. Our office was contacted by someone from the Department of Justice I believe about this document, so I don't know what's happening now.

01:49 THE COURT: Well, as part of the order of dismissal, I will direct that to the extent Quicken has the bond in its possession that they return it to you.

01:49 MR. GORDON: That's the whole point. We gave them 120 days to do that.

01:49 THE COURT: Sir, you don't get to square one by the nature of what you tendered to them. You can't turn as they say a sow's ear into a silk purse. You didn't tender an instrument that was valid that would have triggered any obligation on their part.

MR. GORDON: They didn't do due diligence in regard to even investigating the bond. If they found it to be insufficient, if they would have returned it immediately, we wouldn't have gone through any of this. We wouldn't be here. I would still be making the mortgage payments to Quicken Loans, and we would be fine with it. Either they have got a flaw in their process and procedure which -- I mean, if they would have just returned it immediately, there would have been no harm, no foul.

THE COURT: That would have been nice, but whatever procedural miscues were on the Quicken Loan side, they didn't turn that bond into a valid medium of tender.

MR. GORDON: That doesn't even sound like they did due diligence.

THE COURT: Sir, you have got to listen to me. The procedural errors you point out might have some force if what you tendered in the first instance had some value and was a legitimate instrument that they should have taken. They may have been wrong in not sending it back to you, but in the Court's analysis, the piece of paper you gave to them had no value.

MR. GORDON: They have the ability to go to the Treasury window. They can do due diligence in regard to

01:51 that.

01:51 THE COURT: No, sir, I just disagree with you.

01:51 The tentative on the Motion to Dismiss is going to
01:51 be the order of the Court. You are free to appeal this to
01:51 the Ninth Circuit and ask them to take a look at it. Take a
01:51 look at the Federal Rules of Appellate Procedure, and it
01:51 will tell you how to do it.

01:51 MR. GORDON: All right. Thank you very much.

01:51 THE COURT: Now, there is one other matter. You
01:51 tendered a renewed request for a lis pendens on the
01:51 property. Quicken hasn't responded to that request.

01:51 MR. ELRAKABAWY: Your Honor, we understood that
01:51 there would be this motion today. Now that the case has
01:52 been dismissed, there obviously wouldn't be a basis for a
01:52 lis pendens at this point.

01:52 THE COURT: Well, I will wait seven days for you
01:52 to supply me with authority to the effect that a lis pendens
01:52 is extinguished by a dismissal of the case at the trial
01:52 court. The purpose of a lis pendens is to put the world on
01:52 notice of claims against the property. Mr. Gordon has a
01:52 claim. He feels strongly that the Court is wrong.

01:52 Now, it seems to me until there is a final
01:52 judgment in the case, litigation is final, he ought to have
01:52 a vehicle to tell the world that he has this claim and so
01:52 on. The potential purchaser or lender against the property

01:52 would be on notice, and they could go look at this lawsuit
01:52 and make their own judgment. Let's assume that I'm wrong
01:52 and Mr. Gordon is right. It seems to me he is entitled to a
01:53 vehicle to protect his claim.

01:53 MR. ELRAKABAWY: I think that is absolutely
01:53 correct.

01:53 I do want to be heard briefly on the Motion to
01:53 Dismiss. I noticed that you haven't granted leave to amend,
01:53 so I am understanding that the case is dismissed.

01:53 THE COURT: Right.

01:53 MR. ELRAKABAWY: But at least as to the tentative,
01:53 the dismissal is without prejudice. I have heard the
01:53 suggestion that maybe he would appeal this. Based on there
01:53 is no fact in dispute here and based on the extensive meet
01:53 and confer -- and we have actually briefed this twice -- we
01:53 think it's appropriate to dismiss this with prejudice and
01:53 allow Mr. Gordon to appeal. He has brought a theory that
01:53 has been rejected for years and several times over. I think
01:53 it's only fair for the defendant to be able to get a
01:53 finality that -- we don't dismiss this case, and he brings
01:53 it tomorrow in state court.

01:53 THE COURT: Well, I'm going to dismiss with
01:54 prejudice.

01:54 The heart of your case depends on the validity of
01:54 the bond you tendered, true?

01:54 MR. GORDON: The bond is valid.

01:54 THE COURT: The heart of your case depends on that
01:54 fact, correct?

01:54 MR. GORDON: No, it's not the whole heart of the
01:54 case. Part of it is about an instrument, but it's also the
01:54 process and the rules and the laws and the regulations in
01:54 regards to how they are supposed to process these things
01:54 once they receive it. They didn't answer any of the
01:54 complaints in regards to -- that they didn't return it or
01:54 deposit it. They can't even present the bond.

01:54 So what happened to it? Is it offshore someplace
01:54 waiting for this to be done, and then they are going to
01:54 tender it? I haven't received anything from the U.S.
01:54 Treasury in regards to dishonor on this, and I haven't
01:54 received anything from them. So where is the bond? What
01:54 have they done with it?

01:55 THE COURT: Sir, there is nothing you can add to
01:55 any of the facts that would change the situation of the
01:55 Court's analysis, so I'm going to dismiss with prejudice.
01:55 That allows you to appeal. If I don't dismiss with
01:55 prejudice, we keep going here.

01:55 MR. GORDON: The reason I'm requesting that you
01:55 allow -- don't do it with prejudice, that you allow me the
01:55 lis pendens so I have some kind of protection while I do
01:55 this against them because otherwise I am fighting two

battles.

THE COURT: Well, sir, I'm going to give you your lis pendens.

MR. GORDON: All right. I didn't catch that.

THE COURT: In that regard, you should draft a lis pendens for the Court to sign. With your latest request, you didn't provide a document for the Court to sign.

MR. GORDON: I believe I did. In fact, I believe I supplied two of them. I will double-check, but I will supply the Court with something for you to sign. But I believe that you do have that.

THE COURT: So take a look at Rule 4 of the Federal Rules of Appellate Procedure that basically give you 30 days to file a Notice of Appeal from the entry of judgment.

I think this order closes out the matter, but if you want to submit a separate judgment, that's fine.

(Court and clerk conferring.)

MR. ELRAKABAWY: We will submit a separate judgment.

THE COURT: Okay. Thank you.

(Whereupon, the proceedings were concluded.)

* * *

CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: March 3, 2016

/s/ Sharon A. Seffens 3/3/16

SHARON A. SEFFENS, U.S. COURT REPORTER